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ORIGINAL

No. 85-1358 (12)

Supreme Court, U.S.
FILED
MAR 12 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

WILLIAM L. LUKHARD, Commissioner of the Virginia Department of Social Services,

Petitioner,

v.

ONA MAE REED, SALLIE LONG, RUTH WILCHER, OPAL MAE COOK, STELLA KING, AND ALL OTHERS SIMILARLY SITUATED, and

OTIS R. BOWEN, Secretary U.S. Department of Health and Human Services,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

---

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50pp

The Respondents, ONA MAE REED, et. al., ask leave to file their Brief in Opposition to the Petition for Certiorari from the United States Court of Appeals for the Fourth Circuit, without prepayment of costs, and they seek leave to proceed in forma pauperis pursuant to Rule 46 of the Rules of the Supreme Court of the United States.

Leave to proceed in forma pauperis was sought in the United States District Court for the Western District of Virginia by motion filed June 6, 1983, which was granted by order entered June 6, 1983, pursuant to 28 U.S.C. §1915.

Leave to proceed in forma pauperis was automatically granted by the United States Court of Appeals for the Fourth Circuit, pursuant to Rule 24 of the Federal Rules of Appellate Procedure.

The Respondents' Affidavits in Support of their Motion for Leave to Proceed In Forma Pauperis are attached.

ONA MAE REED, et. al.
-By Counsel-

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Attorneys for Respondents

BY : Jill A Hanken

I, Ona Mae Reed, being first duly sworn, depose and say that I am one of the Appellees in the above-entitled case; that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following: why the Supreme Court of the United States should not accept a writ of certiorari from the favorable decision of the United States Court of Appeals for the Fourth Circuit.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

(1) Are you presently employed? ____ Yes X No

(a) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. _____

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. ____

1977 or 1978 - $628.00/month

(2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source:

X Yes ____ No

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

Aid to Dependent Children (ADC) - $207.00/month

(3) Do you own any cash or checking or savings account?

____ Yes ___X___ No

(a) If the answer is yes, state the total value of the items owned. ____

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ___X___ Yes ____ No

(a) If the answer is yes, describe the property and state its approximate value. 1973 Opel automobile - $175.00

(5) List the persons who are dependent upon you for support and state your relationship to those persons.

Billie Christine Reed, daughter

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare under penalty of perjury that the foregoing is true and correct.

Executed on Feb. 13, 1986.

Ms. Ona Mae Reed

Ona Mae Reed

Notarization omitted

pursuant to 28 U.S.C. §1746.

I, Sally Long, being first duly sworn, depose and say that I am one of the Appellees in the above-entitled case; that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following: why the Supreme Court of the United States should not accept a writ of certiorari from the favorable decision of the United States Court of Appeals for the Fourth Circuit.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

(1) Are you presently employed? ____ Yes ✓ No

(a) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. _____

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. ____

last employed approx. May, 1982, earned approx. $100-120/mo.

(2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source:

✓ Yes ____ No

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

ADC benefits, approx. $245/mo. Jan.-June, 1985, approx $265/mo. July-Dec., 1985;

rental income, $160 (approx - gross 1985);

babysitting, approx $100 1985.

(3) Do you own any cash or checking or savings account?

___ Yes ___✓___ No

(a) If the answer is yes, state the total value of the items owned. ___

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ___✓___ Yes ___ No

(a) If the answer is yes, describe the property and state its approximate value. Home at 48 Jefferson St, Danville, Va., market value: $15690, equity value: $4940.

(5) List the persons who are dependent upon you for support and state your relationship to those persons.

Dexter Long (son) 17; Melanie Long (daughter) 12.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 1986.

Sallie Long

Sally Long

Notarization omitted

pursuant to 28 U.S.C. §1746.

I, Ruth Wilcher, being first duly sworn, depose and say that I am one of the Appellees in the above-entitled case; that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following: why the Supreme Court of the United States should not accept a writ of certiorari from the favorable decision of the United States Court of Appeals for the Fourth Circuit.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

(1) Are you presently employed? ____ Yes X No

(a) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. _____

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. Approximately $365.00 per month. 6/6/85 part-time production work 3 - 4 hours a day.

(2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source:

____ Yes X No

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

(3) Do you own any cash or checking or savings account?

____ Yes X No

(a) If the answer is yes, state the total value of the items owned. ____

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? X Yes ____ No

(a) If the answer is yes, describe the property and state its approximate value. 1968 Oldsmobile Cutlass - $100.00

(5) List the persons who are dependent upon you for support and state your relationship to those persons. David - son.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February ____, 1986.

Ruth Patterson (formerly Wilcher)
Ruth Wilcher

Notarization omitted
pursuant to 28 U.S.C. §1746.

I, Stella King, being first duly sworn, depose and say that I am one of the Appellees in the above-entitled case; that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following: why the Supreme Court of the United States should not accept a writ of certiorari from the favorable decision of the United States Court of Appeals for the Fourth Circuit.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

(1) Are you presently employed? X Yes ____ No

(a) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. $600/mo. (gross) Gulf, 5026 Charlotte Avenue, Nashville, Tennessee 37209

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. ____

(2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source:

X Yes ____ No

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

Child support: $50/mo. (Court order is for $100 but payor has only been sending $50/mo.)

(3) Do you own any cash or checking or savings account?

__X__ Yes _____ No

(a) If the answer is yes, state the total value of the items owned. ____

Checking account $70 approximately

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? __X__ Yes _____ No

(a) If the answer is yes, describe the property and state its approximate value. 1965 Pontiac. value unknown

(1974 Pontiac SRN-46) Co-ceritancy-from-I listed it upon his title

(5) List the persons who are dependent upon you for support and state your relationship to those persons. ____

one son: Christopher Luckado

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 4th, 1986.

Stella A King
Stella King

Notarization omitted
pursuant to 28 U.S.C. §1746.

AFFIDAVIT OF OPAL MAE COOK

I, Opal Mae Cook, being first duly sworn, depose and say that I am one of the Appellees in the above-entitled case; that in support of my motion for leave to proceed in forma pauperis without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following: why the Supreme Court of the United States should not accept a writ of certiorari from the favorable decision of the United States Court of Appeals for the Fourth Circuit.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

(1) Are you presently employed? ____ Yes X No

(a) If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. ____

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. ____

1981 - $461.00/month

(2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source:

X Yes ____ No

(a) If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

Aid to Dependent Children (ADC) - $207.00/month since 7/1/85

Aid to Dependent Children (ADC) - $181.00/month before 7/1/85

(3) Do you own any cash or checking or savings account?

____ Yes X No

(a) If the answer is yes, state the total value of the items owned. ____

(4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ____ Yes X No

(a) If the answer is yes, describe the property and state its approximate value. ____

(5) List the persons who are dependent upon you for support and state your relationship to those persons. ____

Timothy Allen Cook, son

Keith Brian Mabe, son

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury. I declare under penalty of perjury that the foregoing is true and correct.

Executed on [illegible] 15, 1986.

Opal Mae Cook

Notarization omitted pursuant to 28 U.S.C. §1746.

No. 85-1358

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

WILLIAM L. LUKHARD, Commissioner of the
Virginia Department of Social Services,

Petitioner,

v.

ONA MAE REED, SALLIE LONG, RUTH WILCHER,
OPAL MAE COOK, STELLA KING, AND ALL OTHERS
SIMILARLY SITUATED, and

OTIS R. BOWEN, Secretary
U.S. Department of Health and Human Services,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES

COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. DID THE FOURTH CIRCUIT CORRECTLY RULE THAT VIRGINIA'S AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM (AFDC) VIOLATES THE SOCIAL SECURITY ACT BECAUSE IT TREATS PERSONAL INJURY AWARDS AS "INCOME" INSTEAD OF "RESOURCES" AND PENALIZES FAMILIES WHO RECEIVE COMPENSATION FOR BODILY INJURY, YET IMPOSES NO DISQUALIFICATION PENALTY ON THOSE WHO RECEIVE MONEY FROM PROPERTY.

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I. STATEMENT OF THE CASE

In its statement of the case, Petitioner, Virginia Department of Social Services (DSS) ignores the differences between income and resources in the AFDC program; repeatedly misstates that the lump sum income rule adopted by Congress in 1981 applies to all lump sums of money; misrepresents the basis of the opinions of the courts below; and omits any mention of the federal government's post judgment position in this matter. Because of these inaccuracies and omissions, Respondents Ona Mae Reed, et. al., present this statement of the case.

Federal requirements governing the way states count income and resources for AFDC purposes derive from the Social Security Act. 42 U.S.C. §602(a)(7).[1] The Federal statute and regulations have clearly recognized the difference between "income" and "resources", and have provided for some protections to be applied to "resources" that are inapplicable to "income".[2]

In the Omnibus Budget Reconciliation Act of 1981 (OBRA), Pub. L.96-35, 95 Stat. 358, et. seq. (1981), Congress adopted the "lump sum income rule" found in 42 U.S.C. §602(a)(17). (Pet. App. 63) By its clear terms, the statute applies only to receipts of lump sum "income" and not to resources. Likewise, the imple-

****

1 42 U.S.C. §602(a)(7) provides: "[T]he State agency shall, in determining need, take into consideration any...income and resources of any child or relative claiming aid to families with dependent children...."

2 For example, 45 C.F.R. §233.20(a)(3)(i) specifies that a home, an automobile (up to $1,500 in value), and other items are exempt or "exclude[d]" for AFDC purposes. The same regulation permits states to allow recipients to retain up to $1,000 in otherwise non-excluded resources (including cash) without affecting AFDC eligibility. Virginia has opted to set its resource limit at $600. ADC Manual, §303.2(E).

menting federal regulation applies only to receipts of lump sum "income". 45 C.F.R. §233.20(a)(3)(ii)(D). (Pet. App. 68) [Current version at 45 C.F.R. §233.20(a)(3)(ii)(F)(Pet. App. 69)]

Both the federal government and the state of Virginia explicitly acknowledge that not all lump sums of money fall under the lump sum income rule. Specifically, the rule has no application when money represents a resource. Thus, in Virginia's AFDC program, money received upon sale or loss of a car or home or from insurance owned by the family is treated as a resource, and the lump sum income rule does not apply. ADC Manual §§303.3 and 305.4C (Res. App. 2,3, Pet. App. 78).

Despite these principles, Virginia DSS treats money received for personal injuries as lump-sum income and prospectively disqualifies from the program all families who receive personal injury compensation.

Each of the plaintiffs in this case received money for a personal injury suffered by a family member. The named plaintiffs were disqualified from the ADFC program for periods ranging from 2 to 20 months.

Plaintiffs Reed, Long and Wilcher instituted this action on June 6, 1983. They sought injunctive and declaratory relief pursuant to 42 U.S.C. §1983 and 5 U.S.C. §701 et.seq. because of the denial, reduction or termination of their ADC benefits under the lump sum rule. They challenged Virginia's policy of counting personal injury compensation as income subject to the lump sum income rule rather than as a resource, alleging that such policy violated 42 U.S.C. §§602(a)(7),(a)(10), and (a)(17). Later, Respondents Cook and King were allowed to intervene as plaintiffs, and the U.S. Department of Health and Human Services (HHS) was joined as a necessary party.

Upon cross-motions for summary judgment, the district court held that personal injury awards are not income for the purposes of applying the lump sum income rule. Since all parties agreed that the term "income" is nowhere defined in the AFDC statutes or regulations, the district court interpreted the word according to its ordinary and common meaning. In seeking a common usage and definition of the word "income", the district court appropriately viewed dictionary definitions as well as the definitions utilized by other agencies and courts.

Contrary to Petitioner's assertions, the district court did not rely on the definition of income in the federal income tax code to support its conclusion that personal injury awards are not income for AFDC purposes. The district court's review of U.S. Supreme Court opinions dealing with the tax code was "by way of analogy". Reed v. Lukhard, 591 F.Supp. 1247, 1256 (Pet. App. 48). The district court found it "instructive" that the U.S. Supreme Court, when seeking the intent of the creators of the "income" tax system in the Sixteenth Amendment to the Constitution, held that the common meaning of "income" did not include personal injury awards. Id. The district court concluded that Congress intended to limit the application of the lump sum income rule to only those lump sum payments that meet the ordinary meaning of income. 591 F.Supp. at 1257 (Pet. App. 50)

The district court also found fault with Virginia's regulatory scheme because when people receive compensation for property damage, they do not get a fixed period of disqualification; when they receive compensation for a personal injury, they do. The district court utilized a limited "reasonable basis" standard of review to analyze Virginia's regulations. Reed v. Lukhard, 591 F.Supp. at 1255 (Pet. App. 44), and found it is "irrational to

treat a damaged car or home more favorably than a damaged body." 591 F.Supp. at 1257. (Pet. App. 51) The court held that the federal and state interpretation of the lump sum rule as inclusive of personal injury awards is unreasonable and cannot stand. Id.

Both Petitioner and the Secretary of HHS appealed the decision on the ground that personal injury recoveries were properly treated as income for purposes of applying the lump sum income rule. The Fourth Circuit affirmed the decision of the district court in all respects. 774 F.2d 1270, 1272 (Pet. App. 5) With regard to the question of whether personal injury recoveries were income for purposes of applying the lump sum income rule, the Fourth Circuit found that, in adopting 42 U.S.C. §602(a)(17), Congress intended to reach only payments that would ordinarily be considered income and not all large payments of money. 774 F.2d at 1273-1275 (Pet. App. 14-17).

The court of appeals also held that Virginia's regulation applying the lump sum income rule to personal injury awards but not to property settlements was arbitrary and inequitable and thus violated the equitable treatment regulation, 45 C.F.R. §233.10(a)(1). 774 F.2d at 1275 (Pet. App. 16) The court of appeals said, "...The AFDC program was designed to assist the needy; the state by imposing inequitable eligibility requirements thwarts that purpose and runs afoul of regulations aimed at ensuring fair and unarbitrary treatment." Id.

The Petitioner, but not the Secretary of HHS filed a Petition for Rehearing en banc with the Fourth Circuit, which was denied. The federal government also did not join in Petitioner's post judgment motion to stay the mandate pending application to the U.S. Supreme Court for a writ of certiorari. That motion was

granted on November 21, 1985. Finally, the Secretary of HHS has not petitioned this Court for a Writ of Certiorari and has expressly waived his right to file a response to the petition filed by Virginia DSS, by a Waiver filed February 19, 1986.

II. SUMMARY OF ARGUMENTS

The Petition for Writ of Certiorari filed by the State of Virginia should be denied. This case does not raise a substantial Federal question, nor do conflicting decisions exist which justify the expenditure of this Court's time. None of the considerations specified by Rule 17.1 warrant the granting of a writ. The Secretary of HHS, who was an active litigant in the courts below, has not asked this Court for a writ and has expressly waived his rights to respond to Virginia's petition. This posture of the federal agency responsible for administering the AFDC program nationwide also demonstrates that this case should not be accepted for review.

Both opinions below held that Virginia's policy of treating personal injury awards as "lump sum income" violates the Social Security Act in several respects. Finding that neither the statute nor regulations define the word "income", the courts appropriately looked at that word's common meaning to derive Congress' intent in adopting the lump sum income rule. Consistent with its common usage, as well as numerous examples in other contexts, the courts found that personal injury awards, which compensate an individual for damage to one's body, could not be "income" since no gain occurs. The courts could find no legitimate justification for Virginia's treatment of a personal injury award in a punitive fashion while money received for property damage was not. Virginia's regulatory scheme creates an irrational system which contravenes the letter and the purposes of the Social Security Act and regulatory requirements.

The decisions below are based on long standing principles of statutory construction, consistent with more than 40 years of Federal AFDC policy related to income and resources, and suppor-

tive of the equitable treatment of recipients. Courts in eight states have reached similar conclusions.

The decision below does not conflict with any decision of another federal court of appeals. In fact, in the only other court of appeals opinion to date, the Third Circuit also held that personal injury awards could not be treated as lump sum income, relying on Pennsylvania state law. While cases are now pending in three courts of appeal, at this time no conflict exists, and the granting of this writ would be premature.

Three federal district courts and one state supreme court have reached decisions which are contrary to the opinion of the Fourth Circuit. However, in each of those cases, the court did not evaluate all the issues considered by the Fourth Circuit. In several several of these inconsistent cases the courts found that all large payments fall under the lump sum rule. This is simply not so. The federal government and the state of Virginia have acknowledged throughout this litigation that the lump sum income rule does not apply to every large payment of money. Indeed, Virginia's state regulations incorporate numerous examples of the kinds of payments which fall outside the scope of the lump sum income rule, such as payments for property damage and payments from insurance policies owned by families.

Petitioner asks this Court to grant its petition in order to assure consistency in the administration of the AFDC program nationwide. As evidenced by its decisions not to join in post judgment motions in the Fourth Circuit nor take any part at this stage of appeal, HHS does not share Virginia's concerns and is content to allow the Fourth Circuit opinion to stand. This request for uniformity provides no basis for granting the petition.

Every state and territory operates an AFDC program which is unique and different in numerous respects. Congress has designed a program which gives options to the states in terms of the scope of eligibility, levels of benefits, exemptions of resources and administrative procedures. Regarding the lump sum income rule, the length of disqualification will vary from state to state depending upon state established standards of need; states are allowed to choose options for shortening disqualification periods and for starting the disqualification. Even state law definitions of personal injury awards may vary. Just as the Third Circuit looked at Pennsylvania law to analyze the issue, the Fourth Circuit considered, in part, Virginia case law which describes the purpose and scope of a personal injury award. Finally, states may have different ways of treating property damage payments. It was extremely significant to the Fourth Circuit that Virginia DSS does not treat property damage settlements as income.

Thus, the lump sum income rule can be subject to different interpretations and implemented in dissimilar fashions. The statutory and regulatory framework of the AFDC program contemplate the variations. This Court need not and surely cannot review every case in which such differences exist in the AFDC program or in any other state/federal cooperative program where latitude is given to the states to design individual program requirements.

In a new theory, Petitioner also contends that the ruling below contravenes established standards of review set by this Court and seeks review of Virginia's regulations under constitutional standards of the equal protection rational basis test. This position has no merit. The Respondents have never objected to the lump sum income rule on constitutional grounds, and the decisions below rest on statutory and regulatory provisions.

Nevertheless, the district court specifically recognized its limited scope of review and characterized Virginia's regulatory scheme as "unreasonable" and "irrational". Likewise, the Fourth Circuit rejected each of Petitioner's efforts to justify the disparate treatment of funds from personal injury and those representing property. The Fourth Circuit found a violation of the federal regulation which prohibits "arbitrary or unreasonable" eligibility conditions and also prohibits "inequitable treatment of individuals". That regulation imposes standards which are independent from the equal protection rational basis test and are binding on all states administering an AFDC program. Petitioner's arguments, if accepted, would render the regulatory provision absolutely meaningless.

Therefore, because there are no substantial federal questions of law or conflicting decisions among the circuits for this Court to resolve, the Petition for a Writ of Certiorari should be denied.

III. ARGUMENT

A. THIS CASE DOES NOT RAISE A SUBSTANTIAL QUESTION WHICH JUSTIFIES GRANTING A WRIT OF CERTIORARI

1. THE FOURTH CIRCUIT OPINION IS BASED ON ESTABLISHED PRINCIPLES OF STATUTORY CONSTRUCTION AND IS CONSISTENT WITH FEDERAL AFDC POLICY.

Petitioner argues that the decisions below misread legislative history, improperly fail to give weight to the pre-enactment opinion of the Secretary of HHS as to the scope of the lump sum rule, and ignore the purposes of the OBRA amendments in general. None of these arguments has merit.

Petitioners insist that Congress intended all large payments of money and all insurance awards to be evaluated under the lump sum income rule. That position is contrary to the language of the statute, legislative history, the federal regulations, and Petitioner's own policies which specifically remove many payments, including certain insurance settlements, from the purview of the lump sum rule.

The clear language of 42 U.S.C. §602(a)(17) expressly applies the extended disqualification provision of the lump sum income rule to "income" and not to "resources". (Pet. App. 63). Similarly, the federal regulation implementing the above statutory change also applies expressly to "income". 45 C.F.R. §233.20(a)(3)(ii)(D). (Pet. App. 68).

Congress clearly did not intend for all lump sums of money to fall under the scope of the lump sum income rule. The Senate Finance Committee, when considering the appropriate statutory language commented as follows:

> Under present law, any payments that meet the definition of income (e.g., retroactive Social Security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually

> considered a resource in the month thereafter. The committee amendment would require that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program. If such income exceeds the standard of need, the household would be ineligible for aid. (emphasis added).

S. REP. NO. 97-0139, 97 Cong., 1st Sess. 436, reprinted in 1981 U.S. Code Cong. & Ad. News 693 at 702. (Res. App. 1).

The Fourth Circuit found this language compelling. It stated:

> We believe that this language unmistakably reveals Congress' intent to reach only those payments in the OBRA lump sum rule which would ordinarily be considered income, not all large payments of money.

774 F.2d at 1275 (Pet. App 15)

Petitioner's focus on Secretary Schweiker's (then Secretary of HHS) description of the draft bill amending the Social Security Act in 1981 lends no support to its position. According to the Secretary, states would be mandated to apply the lump sum rule to "large payments, such as lump-sum payments of insurance proceeds, or retroactive benefit payments." (Pet. App. 93) It is significant that, in its actions, Congress did not adopt Schweiker's interpretation. In its final conference report, Congress did not include one of the examples provided by Secretary Schweiker. As their single example of lump sum income, the Senate Finance Committee mentions "retroactive social security benefits" --precisely the type of payment which historically has been viewed by HHS and its predecessors as falling into the "income" category.[3] Nowhere in the Committee Reports are

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[3] Over the past twenty-five years, the federal agency responsible for administration of the AFDC program has offered examples of payments constituting income. These consistent interpretations also support the Fourth Circuit's decision that bodily injury awards are not income, and one court has so ruled. LaMadrid v. Hecstrom, 599 F.Supp. 1450, 1455 (D.C. Ore. 1984), appeals docketed Nos. 85-3704 and 85-3719 (9th Cir. 3/14/85) The joint appendix filed below contains several policy memos and interpretations which illustrate this longstanding policy .

"insurance proceeds" even mentioned. It also is significant that HHS, contrary to the statement of Secretary Schweiker, does not mandate that all states treat all insurance proceeds as lump sum income. Property insurance proceeds are treated as a resource. Thus, the Secretary's statements in May 1981 were not adopted by Congress, HHS, or the State of Virginia.[4]

Furthermore, the Fourth Circuit did not, as Petitioner states, ignore the purposes of the OBRA amendments. Indeed, the court specifically acknowledged that with the lump sum income rule, "...Congress hoped to encourage recipients to budget large sums to meet needs over a longer period of time, thereby easing the burden on the public fisc...." 774 F.2d at 1274 (Pet. App. 14) However, the court found that "income" had not been redefined by OBRA, and the lump sum income rule could have no application to personal injury awards which, according to common meaning and usage, are not "income".

Throughout their analyses, the courts below considered the disparate treatment of personal injury awards when compared with Virginia's treatment of property awards. This disparate impact, characterized as "unconscionable" and "irrational" by the district court, was viewed by the Fourth Circuit as "inequitable" and contrary to the "regulations aimed at ensuring fair and unarbitrary treatment..." 774 F.2d at 1275 (Pet. App. 16).

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4 Citing to proposed HHS regulations, Petitioner states that HHS has now concluded that the lump sum income rule applies to all lump sum payments of money. (Petition, p. 6, fn. 6). That comment is extremely misleading since 1) the proposals, published more than 16 months ago, have never been adopted by HHS; 2) the proposal refers only to "windfalls" which would have to be treated under the lump sum income rule, and nowhere in the proposal is personal injury compensation even mentioned; and 3) even if "windfall" regulations are adopted someday by HHS, the treatment of personal injury awards would not be affected, because they are not windfalls. Barnes v. Cohen, 749 F.2d 1009, 1017 (3rd Cir. 1984)

The examples set forth by the district court clearly demonstrate the irrationality of Virginia's regulatory scheme. See, 591 F. Supp. at 1254 (Pet. App. 42-43). Money received for a home destroyed by fire is a resource and can be spent by the individual as needed, while money for burns to the individual's body is income, and the lump sum disqualification applies. Insurance payments after an automobile accident are viewed by DSS in various bizarre fashions. Payments for damage to the vehicle are always a resource. However, injuries sustained in a car accident lead to lump sum disqualifications when damages are paid by the other driver but not when the family's own insurance pays for the injuries. Petitioner's strained efforts to explain these distinctions failed to convince the courts below. (See, discussion, infra p. 21)

The tragic consequences of this irrational system are apparent. Those unfortunate families whose members have suffered severe bodily injury are punished while families which have experienced a mere material loss are not so penalized. These results are totally unreasonable and entirely contrary to the purposes of the ADC program.

The stated purpose of the ADC program is to:

> "...furnish financial assistance...to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self support and personal independence consistent with the maintenance of continuing parental care and protection...". 42 USC §601.

Certainly, the financial need of a dependent child whose mother has been injured in a car accident is no less than the need of the child whose mother's car is wrecked in an accident. For example, a $550 personal injury award would disqualify an

AFDC family of two in Virginia for 2 months, but a $550 property damage award itself carries no disqualification penalty. The financial needs of children in each situation are identical. DSS policies deny the former child any assistance at all.

Petitioner's eligibility conditions totally ignore the purposes of the Social Security Act and arbitrarily deny certain children desperately needed financial assistance. The Court of Appeals was entirely correct:

> This effect is inequitable and puts the injured recipient in an untenable position when compared to the recipient who has lost a more concrete and tangible resource. The AFDC program was designed to assist the needy; the state by imposing inequitable eligibility requirements thwarts that purpose and runs afoul of regulations aimed at ensuring fair and unarbitrary treatment. See 45 C.F.R. §233.10(a)(1). (Pet. App. 16)

Most of the courts which have considered this issue have agreed that personal injury awards are not properly evaluated under the lump sum income rule.[5]

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[5] See, Barnes v. Cohen, 749 F.2d 1009 (3rd Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 2126 (1985); LaMadrid v. Hegstrom, 599 F. Supp. 1450 (D.C. Ore. 1984), appeals docketed Nos. 85-3704 and 85-3719 (9th Cir. 3/14/85); White v. Rahm, Civ. No. (85-0071 (W.D. Wa. Feb. 8, 1985), appeal docketed No. 85-3975 (9th Cir. 7/5/85); Payne v. Toan, No. 84-4085-CV-C-5 (W.D. Mo. Sept. 16, 1985), appeal docketed No. 85-2494-W.M. (8th Cir. 12/20/85). [The state of Missouri has not joined the federal defendant in this appeal.] In addition to these final decisions, in Taggart v. Perales, No. CV-83-159-T (W.D. N.Y., consent judgment filed April 13, 1984), New York agreed to cease its policy of treating certain Workers Compensation awards as income in its AFDC program; and preliminary injunctions have been entered for individuals in West Virginia and Nevada, Miller v. Lord, No. 2:85-0500 (S.D.W.V. May 16, 1985) (preliminary injunction), Johnson v. Griepentrog, Civ. No. 85-914 (HDM)(D.C. Nev. Nov. 12, 1985) (preliminary injunction).

In state court activity, California settled class action litigation by agreeing, in part, to exclude personal injury awards from lump sum income treatment, Stephens v. McMahon, No. 528588 (Sup. Ct. San Diego Nov. 8, 1984) (stipulation for judgment and order).

2. THE FOURTH CIRCUIT OPINION DOES NOT CONFLICT WITH ANY DECISIONS OF ANOTHER FEDERAL COURT OF APPEALS.

The only other court of appeals which has reviewed the question here has reached the same result, although on state law grounds. Barnes v. Cohen, 749 F.2d 1009 (3rd Cir. 1984), cert. denied, ___ U.S. ___, 105 S.Ct. 2126 (1985). Finding state law dispositive, the Third Circuit ruled that the lump sum income rule does not apply to personal injury awards under Pennsylvania's AFDC regulations. Barnes, at 1018. In Pennsylvania, the AFDC lump sum rule applied only to "windfalls". The Third Circuit specifically held that, by definition, a personal injury award was compensation to the injured party -- thus no "windfall" was realized. The Court held that Pennsylvania could not treat personal injury awards as a "windfall" covered by its AFDC lump sum income rule. Barnes v. Cohen, 749 F.2d 1009, 1017 (3rd Cir. 1984).

Defendants have misled this Court by suggesting that the cases of Walker v. Adams, 741 F.2d 116 (6th Cir. 1984) and Sweeney v. Murray, 732 F.2d 1022 (1st Cir. 1984) constitute conflicting court of appeals opinions. The First and Sixth Circuits were not presented with the issue here. The courts did not consider nor evaluate the issue here. It is an elementary principle of stare decisis that

> ...a decision of an appellate court constitutes a precedent only insofar as it determines some issue of law properly before it for review.

IB J. Moore, Federal Practice, ¶0.402[2], at 29 (2d ed. 1984). The Sweeney and Walker courts were presented with an entirely different legal question about the lump sum income rule. Any comment by those courts that the rule's scope includes personal injury awards is irrelevant dicta.

In Walker and Sweeney the question was "Does the lump sum income rule apply to AFDC families which have no earned income?". The question in the Fourth Circuit was "Does the lump sum income rule apply to receipts of personal injury awards".[6] The conclusions reached in Sweeney and Walker have nothing to do with the conclusions reached by the Fourth Circuit. Thus it is particularly misleading for Petitioners to state that the Fourth Circuit reached a "contrary conclusion" from the First and Sixth Circuits "after examining the same legislative history". The Courts in Walker and Sweeney were looking at the legislative history for an entirely different purpose and to find a different answer.

Cases concerning the personal injury question are now pending in the Ninth Circuit,[7] the Seventh Circuit,[8] and the Eighth Circuit.[9] It would be far more expeditious for this Court to allow those circuits to follow the lead of the Third and Fourth Circuits, with the potential for uniformity, rather than to prematurely accept this case now, when no conflict between circuits exists.

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6 Both of these questions were also raised by Respondents in the district court below. The district court concluded that the lump sum income rule did apply to families without earned income, and Respondents did not appeal that issue. 591 F.Supp. at 1256-1257 (Pet. App. 37-41). The two issues are clearly separate and independent.

7 LaMadrid v. Hegstrom, 599 F. Supp. 1450 (D.C. Ore. 1984), appeals docketed Nos. 85-3704 and 85-3719 (9th Cir. 3/14/85), White v. Rahm, Civ. No. C85-0071 (W.D.Wa. Feb. 8, 1985), appeal docketed No. 85-3975 (9th Cir. 7/5/85).

8 Davis v. Coler, 601 F. Supp. 444 (N.D.Ill. 1984), appeal docketed No. 85-2481 (7th Cir. 8/29/85), Watkins v. Blinzinger, 610 F. Supp. 1443 (S.D. Ind. 1985), appeal docketed No. 85-2366 (7th Cir. Aug. 8, 1985)

9 Payne v. Toan, No. 84-4085-CV-C-5 (W.D. Mo. Sept. 16, 1985), appeal docketed No. 85-2494 W.M. (8th Cir. 12/20/85).

3. THE DECISIONS OF ONE STATE COURT AND THREE DISTRICT COURTS WHICH ARE NOT CONSISTENT WITH THE FOURTH CIRCUIT OPINION DO NOT JUSTIFY THE GRANTING OF A WRIT.

Only four courts have upheld a state's treatment of personal injury awards as lump sum income.[10] These decisions do not create the type of conflict which justifies this Court's review because none considered all the issues considered by the Fourth Circuit, and further, because the AFDC statute and regulations contemplate variations in state policies.

a. THE DECISION FROM THE MAINE SUPREME COURT IS ERRONEOUS.

The Maine Supreme Court is the only state court of last resort which has addressed the personal injury question in Littlefield v. Maine, 480 A.2d 731 (Me. 1984). That court did not conclude, as Petitioner implies, that personal injury awards are "income" under the lump sum rule. Instead, the court held that the lump sum rule applies to "...all lump sum acquisitions, whether labeled income or resources." Id. at p. 740 (Emphasis added). That sweeping conclusion is contrary to the statute, to legislative history, to Petitioner's position in this case, and to Petitioner's actual practices. In addition, the Littlefield court did not consider the disparate treatment between personal injury and property damage awards, which the Fourth Circuit carefully analyzed and found to violate the equitable treatment regulation. Thus, the Littlefield decision does not constitute a conflict which warrants review by this Court.

b. THE DISTRICT COURT DECISIONS FAIL TO CONSIDER THE INEQUITABLE TREATMENT OF FAMILIES WHO RECEIVE PERSONAL INJURY AWARDS AS COMPARED TO THOSE WHICH RECEIVE PROPERTY DAMAGE PAYMENTS.

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10 Littlefield v. Maine, 480 A. 2d 731 (Me. 1984), Jackson v. Guissinger, 589 F.Supp. 1288, (W.D. La. 1984); Davis v. Coler, supra, footnote 8, Watkins v. Blinzinger, supra, footnote 8.

None of the three federal district courts which have ruled that personal injury awards can be included within the definition of lump sum income considered the inequitable treatment between personal injury awards and property damage awards. That consideration was a critical part of the Fourth Circuit's decision. In fact, the decisions do not mention how property damage settlements are treated by the administering agencies in those states nor whether that issue was even raised by plaintiffs there.

c. THE AFDC PROGRAM HAS NEVER BEEN A SINGLE UNIFORM PROGRAM NATIONWIDE.

Petitioner asks this Court to grant its petition in order to assure consistency in the administration of the AFDC program nationwide. This request for uniformity provides no basis for granting the petition, since every state and territory operates an AFDC program which is unique and different in numerous respects. Congress has designed a program which gives options to the states for evaluating "need", 42 USC §602(a)(7)(A), exempting resources, 42 USC §602(a)(7)(B), counting in-kind benefits, 42 USC §602(a)(7)(C) and (36), counting earnings 42 USC §602(a)(8)(A), using monthly reports and retrospective accounting, 42 USC §602(a)(13), developing employment programs and job search activities, 42 USC §602(a)(19) and (35), and setting standards of need, 42 USC §602(a)(23).

Regarding the lump sum rule in 42 USC §602(a)(17), different standards of need from state to state result in disqualification periods of different lengths. For example, a family of three in Richmond, Virginia which receives a $5,000 inheritance is disqualified under the lump sum rule for 1 year and 3 months, while a family of three in Charlotte, North Carolina is disqualified for only 10 months. Beginning in October 1984 Congress also gave states the option to shorten lump sum

disqualifications in certain hardship situations. 42 USC §602(a)(17) added by Pub. L. 98-369, §2632(a), July 19, 1984. Some states have adopted these provisions, others have not.

In fact, HHS's position in policy memoranda and in briefs filed in this litigation has been that states have the option of treating personal injury awards as income or resources. That position was rejected by the Fourth Circuit because of Virginia's disparate treatment of personal injury awards and other payments for loss. 774 F.2d at 1275 (Pet. App. 15). To reach this conclusion, the Fourth Circuit looked to Virginia's state law for a characterization of personal injury awards in tort litigation, and looked to Virginia's regulatory treatment of property awards in its AFDC program. States which have different common law on personal injury recoveries or different AFDC policies on property awards may well reach different conclusions on the issue presented to the Fourth Circuit. The statutory and regulatory framework of the AFDC program contemplates these variations.

This Court could not possibly review every case where variations exist in AFDC programs. This Court properly denied the petition for certiorari filed by the state of Pennsylvania in Barnes v. Cohen, supra, and should deny the petition here.

In this case, HHS, although actively a litigant in the district court and in the Fourth Circuit, has chosen not to petition for a Writ of Certiorari nor to file a brief in response to Virginia's petition. Since HHS appears satisfied with the Fourth Circuit opinion, Virginia's plea for uniformity nationwide rings hollow.

B. THE RULING BELOW DOES NOT CONTRAVENE ESTABLISHED STANDARDS OF REVIEW SET BY THIS COURT.

Petitioner also contends that the ruling below contravenes

established standards of review set by this Court. Petitioner complains that the Fourth Circuit should have utilized the analyses involved in constitutional challenges based upon the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. This argument is groundless and in no way supports Virginia's petition for a Writ of Certiorari.

Even though constitutional issues were never raised, the courts below did analyze Virginia's explanations for its regulations to determine whether they were "rational". In fact, the district court specifically acknowledged that the standard of review was "limited", and, citing to Dandridge v. Williams, 397 U.S. 471 (1970), that the regulatory scheme could not be rejected unless it lacks a "reasonable basis". 591 F.Supp at 1255. (Pet. App. 44) The district court concluded that it is "irrational to treat a damaged car or home more favorably than a damaged body." 591 F.Supp. at 1257 (Pet. App. 51)

The Fourth Circuit, in affirming the district court in all respects, also utilized a narrow standard of review to determine whether Virginia's regulation was consistent with the federal equitable treatment regulation. 45 CFR §233.10(a)(1). In the Fourth Circuit Petitioner offered two explanations for its disparate treatment of personal injury and property damage awards. First, Virginia DSS explained that payments for property damage are not treated as lump sum income because DSS assumed that individuals would use the money to replace the lost property. Second, Petitioners claimed that the distinction was rational because before disqualification periods were established, policy allowed recipients who received personal injury awards to deduct expenses related to the injury which were expended prior to and 30 days after the money was received.

The Fourth Circuit rejected these explanations for several

reasons: 1) it was not persuaded by Virginia's assumption that persons receiving property damage awards would use those funds to replace the resource; 2) the policy places a restriction on persons who cannot go into the market to replace his losses due to pain and suffering; 3) the offset rule imposes an arbitrary time limitation on deductions for expenses related to personal injury which are not applicable to property damage awards. The Fourth Circuit concluded that there was no justification for Virginia's policies which were inequitable, unfair and arbitrary.[11] 774 F.2d at 1275 (Pet. App. 16).

Thus, both courts below utilized the very standards which Virginia now seeks. The courts analyzed Virginia DSS's regulations to find some legitimate support for them. Despite this narrow scope of review, the courts determined that the disparate treatment was irrational and could not be used to disqualify otherwise eligible individuals.

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[11] Petitioner now states that regulations adopted by Virginia DSS in September 1985 cure any previous inequity. (Petition, p. 22). These new regulations allow an individual who is disqualified from AFDC because of the lump sum rule to shorten the disqualification by documenting the use of the lump sum money for certain hardship needs, including medical treatment. That regulatory change adds no strength to Virginia's petition. First, it has no bearing on the Fourth Circuit's initial conclusion that Congress did not intend the evaluation of personal injury awards as lump sum income; Second, the regulation was not <u>implemented</u> by DSS until November 14, 1985, after the judgment was issued by the Fourth Circuit (Res. App. 4); Third, the regulation does absolutely nothing to change the primary inequity recognized by the Fourth Circuit - the restriction placed on individuals who can not go into the marketplace to "replace" pain and suffering losses; Fourth, the regulation does nothing to cure the arbitrariness noted by the Fourth Circuit since the latent consequences of the personal injury may fall <u>outside</u> the disqualification period; and finally, the inequity continues in a very practical sense because the injured recipient, told he must use the personal injury award for subsistence living expenses for months into the future, may forego medical treatment.

It should also be emphasized that the Fourth Circuit properly found a violation of the federal regulation without mentioning constitutional principles expressly. When this Court found a violation of 45 CFR §233.10(a)(1) in Blum v. Bacon, 457 U.S. 132 (1982), this Court specifically found that the regulation was "dispositive of the case" and found it unnecessary to reach the constitutional equal protection claim (which had been expressly raised in that case). Blum at 138.

Thus, the Blum decision makes it perfectly clear that the equitable treatment regulation creates standards which are separate and apart from the equal protection clause. As the Secretary of HHS explained in Blum, the equitable treatment regulation was promulgated as a "rule necessary for the proper and efficient operation" of the AFDC program, under the authority given the Secretary in 42 USC §602(a)(5). Blum at 140, fn. 8. Petitioner's position here would render the regulation and this Court's decision in Blum absolutely meaningless.

The Fourth Circuit correctly found a violation of 45 C.F.R. §233.10(a)(1), because the distinction between personal injury and property damage awards is inequitable and arbitrary. 774 F.2d at 1275 (Pet. App. 16). The language of the regulation is perfectly plain and straightforward:

> [The state plan must] specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act....(emphasis added)

45 C.F.R. 233.10(a)(1). (Pet. App. 66). This regulation is not

unlike a "rational basis" test, and it is entirely appropriate and binding on the states.

The inequity here is obvious. Had the members of the Plaintiff class lost a home or a car instead of suffering bodily injury, they could have received ADC benefits again when the remaining funds were less than resource limits. Petitioner's arbitrary, unreasonable and inequitable regulation, however, has resulted in absolute disqualifications from the program which have continued long after all the family's funds were gone.

While it is clear that Petitioner is dissatisfied with the conclusions reached by the courts below, it is equally clear that an appropriate standard of review was utilized. HHS has not complained about the Fourth Circuit's interpretation of one of its own regulations. HHS's decision not to appeal must be viewed as an acceptance -- if not an endorsement -- of the decision below.

The court of appeals rejected Petitioner's attempts to justify the distinction: HHS has not appealed the ruling below. There is no need for further review by this Court.

IV. CONCLUSION

Petitioner has raised no issues which, under Rule 17 of the Rules of this Court would justify the grant of a Writ of Certiorari. There is no conflict present between federal courts of appeal, and it would be premature to accept this case so long as potentially uniform decisions may be rendered by the circuits which are now considering the issue. The decision from Maine also does not justify this Court's time since the Maine Supreme Court did not consider all the issues which were analyzed by the Fourth Circuit, and that Court made sweeping statements of law which are not correct.

Petitioner's concerns about nationwide uniformity in the AFDC program are in no way compelling, given the wide variations in programs and HHS's decision not to appeal the Fourth Circuit opinion. Likewise, the Petitioner's claim that the standard of review utilized below was improper carries no weight. The courts did use a narrow standard, and, again, it is significant that HHS has not objected to the court's conclusion that one of its own regulations was violated by Virginia's policies.

While courts in many states have considered or are now considering the personal injury question, the majority of the decisions are consistent with the Fourth Circuit opinion. Moreover, in every decision where the inequitable treatment between money for property loss and personal injury was considered courts have found the disparity irrational.

For these reasons, Respondents respectfully request that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,
ONA MAE REED, et al.,

by _____
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V. AFFIDAVIT OF FILING AND SERVICE

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

Jill A. Hanken, being first duly sworn, deposes and says:

1. I am counsel of record in this case for the Respondents, ONA MAE REED, et al., and a member of the Bar of this Court.

2. On March 12, 1986, pursuant to Supreme Court Rules 28.2, and 46.2, and within the time permitted for filing, I caused to be mailed, first class, postage prepaid, at the United States Post Office, Richmond, Virginia 23219, addressed to The Honorable Joseph F. Spaniol, Clerk, Supreme Court of the United States, One First Street, N.E., Washington, D.C. 20543, the original of (a) the attached Brief in Opposition to Petition for Writ of Certiorari, and (b) Motion for Leave to Proceed in Forma Pauperis, with accompanying affidavits.

3. On March 12, 1986, pursuant to Supreme Court Rule 28.5, I also caused to be mailed, first class, postage prepaid, at the same Post Office, a copy of (a) the attached Brief in Opposition for Writ of Certiorari, and (b) Motion for Leave to Proceed in Forma Pauperis with accompanying affidavits, to each of the following persons:

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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed this 12th day of March, 1986, at Richmond, Virginia.

Jill A. Hanken

Jill A. Hanken

The foregoing instrument was subscribed and sworn to before me, a Notary Public in and for the State and City aforesaid, on this 12th day of March, 1986, by Jill A. Hanken.

Edward N. Waylor

Notary Public

My commission expires: June 16, 1990

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RESPONDENTS' APPENDIX

Senate Finance Commitee Report, No. 97-0139, 97th Cong. 1st Sess. (1981)..... 1

Virginia ADC Manual §303.3 2

DSS Description of 12/82 Amendments to ADC Manual §§303.3 and 305.4(C)..... 3

DSS Implementation of Shortening Provisions 4

Senate Finance Commitee Report No. 97-0139, 97th Cong., 1st Sess (1981)

LEGISLATIVE HISTORY
P.L. 97-35
[page 430]

Count lump-sum payments.—Under present law, any payments that meet the definition of income (e.g., retroactive social security benefits) are counted as income in the month of receipt and any of the payment that is not spent in that month is usually considered a resource in the months thereafter.

The committee amendment would require that large payments, together with other income remaining after the application of disregards, be considered available to meet ongoing needs in the AFDC program. If such income exceeds the standard of need, the household would be ineligible for aid. Any amount of the income that exceeds the monthly needs standard would be divided by the monthly needs standard, and the household would be ineligible for aid for the number of months resulting from that calculation. Any remaining amount would be counted as income in the first month following the period of ineligibility.

303.3 PROPERTY IN EXCESS OF ALLOWABLE RESERVES - When an otherwise eligible child and his parent(s) living in the home have cash and/or liquid assets, other than the reserved items listed above, totaling more than $600, the resource must be examined to determine ownership and unless designated as a resource to one of the eligible children, eligibility will not exist (see Section 302.6).

All loans, except those obtained for current living expenses, will be considered an available resource. Current living expenses shall include items such as the cost of food, clothing, shelter and other day to day living expenses for the current month in which the loan was received. For example, a loan obtained to buy a car is considered a resource. A loan received to pay current rent is considered income. See 305.4C.

When any of the reserved items listed in 303.2 above OR ANY OTHER REAL OR PERSONAL PROPERTY OWNED BY AN INDIVIDUAL WHOSE RESOURCES ARE CONSIDERED IN DETERMINING ELIGIBILITY ARE SOLD OR transferred into cash or other liquidable assets, these items are resources and will be considered in relation to the allowable reserve.

Example #1: Ms. C sells her exempted vehicle and receives $500 from the sale. The agency will consider this sum of money in relation to the allowable reserve.

Example #2: Ms. M loses her exempted home as a result of a fire. She receives an insurance settlement in the amount of $20,000. This money is a resource and will be considered in relation to the allowable reserve.

* * *

[redacted]

COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

[redacted]

December 27, 1982

AID TO DEPENDENT CHILDREN

Supplement 1 to
ADC Transmittal #82

The attached material consists of revisions to the ADC Manual as a result of a recent court decision in the following areas:

A. Section 303.3 has been revised to reflect that when any resource is sold or converted to cash, the proceeds are to be considered as a resource.

B. Section 305.4 has been revised to reflect that the proceeds derived from the sale or conversion of real or personal property are not considered a lump sum. For example, when an insurance policy owned by the assistance unit is cashed in or pays off, the money received will not be considered a lump sum.

The attached material is effective January 1, 1983 and is to be incorporated into the ADC Manual as follows:

Section 303.1 - 303.3, page 1, dated 1/83 (1 sheet) to replace Section 303.1 - 303.3, page 1, dated 7/82 (1 sheet).

Section 305.4, page 11, dated 1/83 (1 sheet) to replace Section 305.4, page 11, dated 7/82 (1 sheet).

William L. Lukhard

COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

November 6, 1985

ADC Transmittal #100

AID TO DEPENDENT CHILDREN

The State Board of Social Services has elected to adopt the policy for shortening the period of ineligibility due to the receipt of a lump sum, as provided by the Deficit Reduction Act (DEFRA) of 1984.

The information contained in this transmittal is effective November 14, 1985. Additionally, applicants and recipients who are in a period of ineligibility which was established prior to November 14, 1985 will be <u>reevaluated</u> based on this policy, upon reapplication. The usual <u>reapplication</u> procedures are applicable. Retroactive benefits are not to be made; however, this policy is applicable to lump sum ineligibility periods established prior to November 14, 1985.

Section 305.4.C has been changed to identify the conditions under which a lump sum period of ineligibility can be shortened.

Section 401.6 has been revised to require an explanation to the applicant/recipient of the provisions for shortening the period of ineligibility.

The attached material is to be incorporated into the ADC Manual as follows:

Section 305.4, pages 11c-11f, dated 11/14/85 (4 sheets) to replace Section 305.4, pages 11c and 11d, dated 10/85 (2 sheets).

Section 401.6, pages 12 and 12a, dated 11/14/85 (2 sheets) to replace Section 401.6, page 12 and 12a, dated 10/84 and 10/85 (2 sheets).

William L. Lukhard